

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Respondent/Plaintiff,

v.

CV 08-0037 BB/WPL
CR 06-1447 BB

JAVIER RODRIGUEZ-HERNANDEZ,

Movant/Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

This matter is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition (PFRD), filed on October 31, 2008. The parties were notified that objections were due within ten days of service of the PFRD and that if no objections were filed, no appellate review of the PFRD would be allowed. To this date, no objections have been filed.

IT IS THEREFORE ORDERED that:

- 1) the PFRD is adopted as an order of the Court;
- 2) the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody is GRANTED IN PART;
- 3) the judgment and sentence in CR 06-1447 shall be vacated and immediately reentered, so that Rodriguez-Hernandez can perfect an appeal; and
- 4) the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody is DENIED WITHOUT PREJUDICE in all other respects.



BRUCE BLACK
UNITED STATES DISTRICT JUDGE